IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 7236 of 2007()

CRIME NO. 267/07 OF KUNNAMANGALAM POLICE STATION
MC.1188/2007 of D.C. & SESSIONS COURT,KOZHIKODE

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PETITIONERS/ACCUSED

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1. VIPIN RAJ, S/O. BABU RAJ,
MANNAMPARAMBATH, PERINGALAM, KUNNAMANGALAM,
KOZHIKODE. (A2)

2. SRIJITH, S/O. SREEDHARAN NAIR,
MELEPATTOTH HOUSE, PERINGALAM, KUNNAMANGALAM,
KOZHIKODE. (A4)

3. AJAY, S/O. MOHANDAS,
AMBAZHAKUZHIYIL HOUSE, PERINGALAM,
KUNNAMANGALAM, KOZHIKODE. (A6)

BY ADV. SRI.KRISHNADAS P. NAIR
SRI.HARIDAS P.NAIR
SMT.K.L.SREEKALA
SRI.M.A.VINOD
SRI.M.RAJESH KUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7236 of 2007

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Dated this the 28th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 2, 6 and 4 respectively. Altogether there are six accused persons. They face allegations in a crime registered for offences punishable, inter alia, under Section 308 r/w. 149 I.P.C. The defacto complainant is the cleaner in a bus. On the allegation that he had misbehaved to the sister of one of the accused persons, the accused persons were members of an unlawful assembly, who, in prosecution of their common object, entered the bus, dragged the defacto complainant out of the bus and attacked him with dangerous weapons, including iron rod. The victim suffered serious (though not grievous hurt) injuries. All the accused, including the petitioners, are named in the F.I.R. The alleged incident took place on 22.10.2007. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false. There was a clash between two groups and in such clash the victim/defacto complainant had suffered the injuries. False and vexatious allegations are now being raised against the petitioners, it is submitted.

3. The learned Prosecutor opposes the application. He submits that the nature of the weapons, the manner of attack and the nature of injuries suffered must certainly reveal the gravity of the offence alleged. In any view of the matter, the petitioners do not deserve the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. They may be directed to surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, submits the learned Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. The petitioners, as stated earlier, are named in the F.I.R. The nature of the weapons are also revealed from the allegations in the F.I.R. The wound certificate was also read over to me. I shall scrupulously avoid any detailed

discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that, I do not find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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